

BOOTH, FRERET, IMLAY & TEPPER, P.C. **DOCKET FILE COPY ORIGINAL**

ATTORNEYS AT LAW

CHRISTOPHER D. IMLAY
CARY S. TEPPER

DAN L. WARNOCK*
*ADMITTED IN UTAH

5101 WISCONSIN AVENUE, N.W.
SUITE 307
WASHINGTON, D.C. 20016-4120

TELEPHONE: (202) 686-9600
FACSIMILE: (202) 686-7797

ROBERT M. BOOTH, JR. (1911-1981)
JULIAN P. FRERET (RETIRED)

January 23, 1998

RECEIVED

JAN 26 1998

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

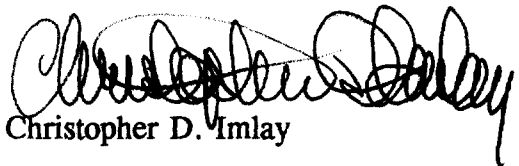
Via Hand Delivery

Re: Comments of Jeffrey N. Eustis MM Docket 97-234

Dear Ms. Salas:

Attached herewith are an original and four copies of the comments of Jeffrey N. Eustis in the Captioned Rulemaking Proceeding. Kindly associate these with the Commission's docket files in MM Docket 97-234. Copies are being separately delivered to the offices of each commissioner. Should any questions arise concerning this matter, kindly notify the undersigned counsel.

Yours very truly,


Christopher D. Imlay

cc: Jeffrey N. Eustis
All Commissioners

No. of Copies rec'd 054
List A B C D E

Jeffrey N. Eustis
P.O. Box 60991
Palo Alto, CA 94306
January 19, 1998

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

RE: PUBLIC COMMENTS -- NOTICE OF PROPOSED RULEMAKING RELEASED NOVEMBER 26, 1997,
MM Docket No. 97-234, GC Docket No. 92-52, GEN Docket No. 90-264

Dear Ms. Salas:

The following are the Public Comments of Jeffrey N. Eustis ("Commenter") regarding the above-referenced Notice of Proposed Rulemaking. Commenter is Licensee of AM Broadcast Station KREH, Oakdale, Louisiana. The comments respond to the Commission's request, in Paragraph 49, for "...comment generally on whether we should adopt any special auction policies or procedures in the AM service or other services to accomodate Section 307(b) of the Act, 47 U.S.C. Section 307(b), which requires that the Commission distribute licenses among states and communities so as to 'provide a fair, efficient, and equitable distribution of radio service.'"

Commenter notes that the AM service has peculiarities and filing procedures unlike those of the other broadcast services. These differences are primarily rooted in the physics of AM radio, particularly the large coverage areas, and the varying soil conductivities.

In order to comply with Section 307(b), the straightforward auction procedures and policies appropriate for "like kind" FM or other service applications are simply not applicable to the AM service. This is because AM applications, even when mutually exclusive, are inherently not "like kind".

Traditional Section 307(b) selection criteria such as first transmission service, or first or second reception service ("white" or "gray" area analysis) have important AM implications that do not apply in other services. In particular, a prospective AM licensee must first do a detailed frequency search, and then do his/her own Section 307(b) analysis. At the center of this analysis is a study to select a community of license. When placed on an "A" cut-off list, an application for a new AM station (or an AM major change) is subject to the filing of mutually exclusive applications which may specify vastly different facilities and coverage areas, as well as different communities of license perhaps hundreds of miles apart. It is thus both impossible and unfair to apply the auction tool to resolve mutually exclusive applications that are so vastly different. Even more importantly, compliance with Section 307(b) cannot occur without the Commission first determining administratively, or through the mechanism of a simplified hearing, which applicant's grant would best provide a "fair, efficient, and equitable distribution of radio service."

Another area of concern is the ability of existing AM stations, through the mechanism of a major change application, to improve service consistent with Section 307(b). In the case of KREH-AM, of which Commenter is Licensee, the Commission has recently granted a major change application, which provides first transmission service to a new and larger community of license, as well as greatly increasing the total persons served. Had an auction existed, satisfying these important Section 307(b) objectives might well never have occurred.

One desirable aspect of present AM processing that must be retained is the issuance of "B" cut-off lists. This allows AM applicants that are mutually exclusive to tender, where possible, minor technical amendments to eliminate their mutual exclusivity and to obtain grants.

In addition, the rigorous requirement of site availability certification imposes a necessary and proper requirement on an applicant. If an applicant were simply to assume that appropriate land was available (often 20 or more acres for a directional AM facility), then it is questionable whether his/her station would ever be built. Therefore, the basic qualifications of an applicant are best determined independently of an auction.

A further benefit of avoiding an auction procedure for applications for new AM broadcast facilities is that the AM broadcast service represents a comparatively low cost opportunity for minorities to enter broadcast ownership. Because of the economics of AM facilities, increased ethnic diversity in programming is encouraged. Auctions would no doubt increase the price of entry, and reduce minority ownership and program diversity.

Therefore, for the above reasons, it is strongly recommended that the current AM application, processing, and Section 307(b) selection procedures be retained in their current form. Administrative review of Section 307(b) issues, or simplified hearings, should be utilized in lieu of auctions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey N. Eustis", with a large, stylized initial "J" and "E".

Jeffrey N. Eustis